

manufacturing and retailing, are inter-related and interdependent and are performed to serve a business objective common to all. The mere fact that they are under common ownership is not, by itself, sufficient to bring them within the same enterprise. Thus, where a manufacturing business is carried on separately from and wholly independently of a retail business, with neither serving the business purpose of the other, they are separate businesses even if they are under common ownership. However, where the manufacturing operations are performed in substantial part for the purpose of distributing the goods through the retail stores, or the retail outlet serves to carry out a business purpose of the manufacturing plant, retailing and manufacturing will be “related” activities and performed for a “common business purpose,” and they will be a single enterprise if they are performed through unified operations or common control.

(c) In these cases of “vertical operations” a practical judgment will be required to determine whether the activities are maintained and operated as separate and distinct businesses with different objectives or whether they, in fact, constitute a single integrated business enterprise. The answer necessarily will depend upon all the facts in each case.

§ 779.210 Other activities which may be part of the enterprise.

(a) An enterprise may perform certain activities that appear entirely foreign to its principal business but which may be a part of the enterprise because of the manner in which they are performed. In some cases these activities may be a very minor and incidental part of its business operations. For example a retail store may accept payments of utility bills, provide a notarial service, sell stamps, bus and theater tickets, or travellers’ checks, etc. These and other activities may be entirely different from the enterprise’s principal business but they may be performed on the same premises and by the same employees or otherwise under such circumstances as to be a part of the enterprise.

(b) Sometimes such activities are performed as an adjunct to the principal business to create good will or to attract customers. In other cases, the businessman may engage in them primarily for the additional revenue. Some such foreign activities may be conducted in a more elaborate manner, as where the enterprise operates a bus stop or a post office substation as an adjunct to a principal business such as a hotel or a retail store. Where in such a case the activities are performed in a physically separate “establishment” (see §§ 779.303-779.308) from the other business activities of the enterprise and are functionally operated as a separate business, separately controlled, with separate employees, separate records, and a distinct business objective of its own, they may constitute a separate enterprise. Where, however, such activities are intermingled with the other activities of the enterprise and have a reasonable connection to the same business purpose they will be a part of the enterprise.

§ 779.211 Status of activities which are not “related.”

Activities which are not related even if performed by the same employer are not included as a part of the enterprise. The receipts from the unrelated activities will not be counted toward the annual dollar volume of sales or business under section 3(s) and the employees performing such unrelated activities will not be covered merely because they work for the same employer. Common ownership standing alone does not bring unrelated activities within the scope of the same enterprise. If, for example, one individual owns or controls a bank, a filing station, and a factory, the mere fact of common ownership will not make them one enterprise. However, if it appears that there is a reasonable relationship of all the activities to a single business purpose a different conclusion might be warranted. Activities which are not “related” will be treated separately for purposes of the tests contained in section 3(s)(1) through (5) of the prior Act and section 3(s)(1) through (4) of the amended Act. For example, in the case where a single company operates retail grocery stores and also engages in an